

OGC HAS REVIEWED.

Honorable Allen W. Dulles
Director, Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Dulles:

This will refer to my letter of November 4, 1953, in reply to your request for my advice with respect to your authority to provide one of your employees a hearing before a Security Hearing Board consisting of members selected from the roster established by the Civil Service Commission to implement the administration of Executive Order 10450 and the Act of August 26, 1950. Your request was in connection with a specific employee against whom derogatory allegations had been made. You stated that you determined that suspension of the employee was neither necessary nor desirable in the interest of the national security but that you considered it imperative that his case have the most complete and impartial review that could be obtained under the President's program and desired that the information pertaining to him be reviewed by "outside impartial persons with proper qualifications".

In my reply to you contained in the letter of November 4, 1953, I expressed the view that there is no prohibition in either the Act of August 26, 1950, Title 5 U.S.C. 22-1, or Executive Order 10450, against giving the employee a hearing without first suspending him. However, I did indicate the problem which such a procedure would create. Authority to discharge under the Act of August 26, 1950, is limited to suspended employees. Permanent employees are entitled to a statement of charges and hearing after suspension and before termination. Thus, in the event it is decided to discharge an employee against whom charges are filed and who has not been suspended, the employee would be in a position to argue that the procedures under the Act require that he be suspended before he is discharged and that thereafter he be given a statement of charges, a hearing, etc., even if he had already been accorded all of these rights prior to suspension.

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To obviate this procedural difficulty I suggested that you adopt a procedure which had been adopted by other agencies and approved by this Department. Under that procedure the employee would execute a written statement that the hearing, to be held without first suspending the employee, and the procedure relating to it, are to be regarded as equivalent to and in full satisfaction of the rights afforded the suspended employee under the Act of August 26, 1950 and Executive Order 10450. This Department was then of the view that the execution of such a waiver would probably operate as a bar to any technical claims of an employee who had been accorded all the substantive rights provided for by the Act without, however, having been suspended. The approval of this waiver procedure was motivated by a desire to prevent the hardship that would be imposed on employees who are suspended and subsequently cleared.

Since writing the letter to you the waiver procedure has been reconsidered by this Department and I concluded that its exercise would not be consistent with the policy of the Act of August 26, 1950. The agencies which had already adopted the waiver procedure were accordingly notified of these views and were asked to delete the provision permitting such waivers from their personnel security regulations and to suspend any employee as to whom it is determined to be necessary to file charges and hold a hearing. In view of the fact that I am advised you are now in the process of revising your own personnel security regulations, I also believe it advisable to notify you of the present position of this Department.

You are aware, of course, that under section 102(c) (Title 50 U.S.C. 403(c)) of the National Security Act of 1947, as amended, you are authorized in your discretion to terminate the employment of any officer or employee of your agency whenever you determine such action necessary or advisable in the interests of the United States. This section does not require suspension before termination of employment, permits you to constitute a board to advise you, and enables you to select the members of such a board from qualified persons in and out of Government.

Sincerely,

HERBERT BROWNELL, JR.

Herbert Brownell, Jr.
Attorney General

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